IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1894 of 1992

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)

Versus

BHUPENDRAKUMAR OMPRAKASH SHARMA & 2 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant
MR NILESH A PANDYA for Defendant(s) : 1, 3,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
9th October, 2007

ORAL JUDGMENT

This Appeal preferred under Section 110D of the Motor Vehicles Act, 1939 by the New India Assurance Company Limited [hereinafter referred to as, "***the Insurance Company***"] arises from the common judgment

and award dated 31st March, 1992 passed by the Motor Accident Claims Tribunal [Main], Bharuch in Motor Accident Claim Petitions No. 817 of 1987 and No. 249 of 1987 in so far as the Insurance Company has been held liable for the entire amount of compensation awarded in the Motor Accident Claim Petition No. 817 of 1987.

The accident in question occurred on account of head on collision of two Trucks bearing registration nos. PUT-7385 and ADA-7299 on National Highway No.8 near Ankleshwar. In the said accident, the driver of the Truck No. PUT-7385 received injuries for which he had to undergo medical treatment. He filed the aforesaid Claim Petition No. 817 of 1987 in the Motor Accident Claims Tribunal, Bharuch for compensation in the sum of Rs.5,00,000/=. The learned Tribunal, considering the evidence on record, held that the accident in question occurred on account of rash and negligent driving by the drivers of both the offending trucks. The extent of negligence attributed to the driver of the Truck bearing registration No. PUT-7385 was assessed at 60%. Considering the age of the driver, his earning capacity, medical expenses

incurred and the loss of future income, the learned Tribunal awarded compensation to the injured driver in the sum of Rs. 5,21,000/=. Considering the 60% negligence attributed to the injured driver, the aforesaid amount of compensation was proportionately reduced to Rs. 2,08,400/=. The learned Tribunal further observed that the offending truck No. ADA-7299 was insured by the Insurance Company. The liability of the Insurance Company was unlimited, accordingly, the Tribunal passed an award in the sum of Rs. 2,08,400/= in favour of the injured driver – the respondent no.1 and held the owner and the Insurance Company jointly and severally liable. Feeling aggrieved, the Insurance Company has preferred the present Appeal.

Mr. Mehta has submitted that the Insurance Company does not dispute the *factum* of the accident, the extent of injury caused to the injured driver, the extent of negligence attributed to the injured driver, and the quantum of compensation awarded to the injured driver. Mr. Mehta has submitted that the only grievance the Insurance Company has is against the unlimited liability imposed upon the Insurance

Company in respect of the amount of compensation. He has submitted that the learned Tribunal has erred in construing the policy in question and in holding that the liability of the Insurance Company was "*unlimited*". He has relied upon the relevant Insurance Policy Exh.63. He has submitted that under the clause "*Limits of Liabilities*", the policy reads - "***Limit of the amount of the Company's liability under section II {1}(i) in respect of any one accident. Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.***" He has submitted that by the aforesaid specific clause entered in the policy, the Insurance Company had taken up only such liability as was required by the Act. He has relied upon Section 95 of the Motor Vehicles Act, 1939. He has submitted that the said Section 95 provides for limits of liabilities. Sub-section [2] of the said Section 95 provides for limit of liability of the Insurance Company in respect of the goods vehicle. Clause (a) thereof provides that, "***where the vehicle is a goods vehicle, a limit of one lakh and fifty though rupees in all....***" Mr. Mehta has also relied upon the judgment of the *Hon'ble*

Supreme Court in the matter of the ***National Insurance Company Limited v. Jugal Kishore & Ors.*** [AIR (1988)SC 719]. The *Hon'ble* Court after considering the aforesaid sub-section [2] of Section 95 of the Act held that, ***"..Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf."***

Mr. Pandya has contested the Appeal and has made an attempt to establish that in the instant case, there was a specific agreement between the owner of the insured truck and the insurance company and a higher premium was charged for the same. However, nothing of the count has been established by the contents of the policy Exh.63. In absence of specific agreement to that extent, the liability of the

insurance company would be limited to the statutory limit prescribed under sub-section [2] of Section 95 of the Act. At the relevant time, it was *rupees one lakh fifty thousand.* The liability of the insurance company would be confined to the said sum of *rupees one lakh fifty thousand only.*

In above view of the matter, the Appeal is allowed with cost. The *impugned* Award of the Motor Accident Claims Tribunal [*Main*], Bharuch passed in Motor Accident Claim Petition No. 817 of 1987 be modified accordingly.

{Ms. R.M Doshit, J.}

*Prakash**